

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DEHRADUN “DB” BENCH, DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.92/DDN/2023  
Assessment Year: 2017-18

ACIT, Circle-1(1)(1), Dehradun	<b>Vs.</b>	Chakrata First and Associates, C/o- Amit Tak 41 Sanjay Marg, Hathori Fort, Jaipur, Rajasthan
<b>PAN: AALFC2896B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. S.K. Ahuja, AR
Department by	Sh. Amar Pal Singh, Sr. DR

Date of hearing	18.03.2025
Date of pronouncement	23.05.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

This assessee’s appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the “CIT(A)/NFAC”], Delhi’s DIN and order no. ITBA/NFAC/S/250/2023-24/1058175690(1), dated 23.11.2023, involving proceedings under sections 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. Heard both the parties at length. Case file perused.
3. This Revenue's appeal raises the following substantive grounds:
  1. *On facts and circumstances of the case and in law, whether the CIT (A) was justified in holding that, the cash deposits made by the assessee in demonetised Specified Bank Notes (SBN) during the period from 09.11.2016 to 31.12.2016 were recorded as business sales in its books of accounts by the assessee whereas the correctness and completeness of the assessee's books of accounts were doubted by the revenue for the reason that, the assessee had not produced and not got verified them during the assessment proceedings.*
  2. *On facts and circumstances of the case and in law, whether the CIT (A) was correct in accepting that all the cash deposits were accounted for as sales without examining the possibility that, the assessee might colour its unexplained cash deposits in SBNS as its business sales.*
  3. *Whether the learned CIT(A) erred in non-doubting the correctness and completeness of the assessee's books of accounts when it had averred during the assessment and appellate proceedings that, it had made cash deposits to the tune of Rs. 29,05,000/- in SBNs during the period from 09.11.2016 to 31.12.2016 out of the cash in hand of Rs. 8,58,412/- as on 08.11.2016 and cash sales made by it in SBNs for the next 03 days whereas the actual deposits as confirmed by the bank authorities revealed that a sum of Rs. 30,05,000/- out of the total sum in SBNs were deposited by the assessee on 11.11.2016 itself.*
  4. *On facts and circumstances of the case and in law, whether the learned CIT (A) is correct in admitting the books of accounts and supporting documentary evidences such as cash book, sales ledger etc. from the assessee at the appellate stage as additional evidences in contravention to the rule 46A of the I.T. Rules, 1962*
  5. *Whether the learned CIT (A) had erred in not questioning the correctness of the assessee's books of accounts maintained for the year for the given fact, the assessee in contravention of the Gazette Notification 2652 dated: 08.11.2016 as issued by the Central Government and against the basic accounting principle/concept of money measurement, had transacted in SBNs on or after 09.11.2016 and made the entries of the same in its books maintained for the year.*
  6. *On facts and circumstances of the case and in law, whether the CIT (A) was justified in nullifying the addition made on account of enhancement of assessee's profit percentage for the year on the argument that, the same was done without any logical basis whereas*

*the said enhancement was grounded on the assessee's failure to substantiate the direct and indirect expenses as well as the purchases claimed by it in the Trading and P&L Account prepared for the year.*

7. *That, the appellant craves leave to add or amend any other more ground of appeal as stated above as and when needs for doing so may arise.*

4. Both the learned representatives next invite our attention to the CIT(A)'s lower appellate findings reversing the Assessing Officer's action adding the assessee's cash deposits u/s 69A r.w.s. 115BBE of Rs.34.74 lakhs and further rejecting its books of account under section 145(3) to reassess its net profit "NP" @ 10% on turnover of Rs. 16,61,28,493/-; coming to Rs.1,66,12,849/-; respectively, reading as under:

*“6.1 The assessee is a partnership firm dealing in the business of liquor. The assessee filed ITR with return loss of Rs.61,02,736/- has shown [17:46, 20/05/2025] RAJESH KUMAR: total turnover of Rs. 16,61,28,493/-. During the year a total amount of Rs.34,74,000/- in cash has been deposited by assessee in old SBNs of Rs.1000/- and Rs.500/-.*

*6.2. The assessee during the course of assessment proceeding explained that the deposits were his cash sales in old currency SBNS and were duly recorded in its books of accounts. However, the AO found the submission of the assessee not acceptable. The AO quoted Gazette Notification 2652 dated 8th Nov, 2016 and held that SBNs were not allowed by RBI for normal business activities and were not allowed to store for future usage. He thus held that the firm was allowed either to exchange SBN from Banks or to deposit in its bank account or therefore was not authorized to accept SBN as firms were not allowed to accept SBN from 09.11.2016.*

*6.3. The AO further held that the transaction made in SBN on or after 09th Nov, 2016 cannot be entered into cash books. Consequently the assessee having accepted SBNs of Rs.34,74,000/- during demonetization period and having deposited it in its bank account, the*

AO made addition of Rs.34,74,000/- as unexplained money u/s 69A of the Act.

6.4. The AO rejected the books of account under section 145(3) considering that no books of account and bills or vouchers were furnished. The AO further held that since the assessee did not produce any books of account, such as stock register, purchase and sale book, cash book, bills or vouchers related to the expenses, purchase and sale, the net loss declared by the assessee at 3.67% is not acceptable. Thus, the AO held that to cover all possible leakages, the net profit rate of 10% will be justifiable. Therefore, in the absence of books of accounts, bills, vouchers, the net profit at 10% of gross receipts or turnover of Rs. 16,61,28,493 was estimated, which comes to Rs. 1,66,12,849.

## 7. Findings

7.1. I have considered the submissions and grounds of appeal of the appellant carefully. The assessment order u/s 143(3) has been perused. The details as submitted have been examined. The grounds of appeal 1 to 4 are taken together as it is effectively directed against addition of Rs.34,74,000/- u/s 69A which has been considered by the AO as not allowable cash deposits as it were deposits made in SBNs.

### 7.2. Findings on Ground of appeal 1 to 4:

I have considered the facts of the case and examine in details the documents submitted. The appellant submitted that the cash deposits were duly accounted for in the books of accounts and all the necessary taxes such as Uttarakhand Cess was duly paid on the total sales as per books of accounts. On further examination of bank account statements, it is seen that there have been regular cash deposits and payments made to parties. The pattern of cash deposits are observed as normal for a person dealing in liquor. The auditor has certified that the appellant has been maintaining stock register, cash book, ledger and journal etc.

7.3. The AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained money u/s 69A of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. is patently evident from the entries in the bank statement and cash book. It is not the case of the A.O. that the cash deposited in the bank during the demonetization period was in huge excess compare to deposits in earlier period during the year. The books of account of the appellant have also been audited by an independent reputed auditor.

7.4. Thus AO has not brought any material on record to establish that the sales were bogus. Merely analysing the data by twisting the same and giving some findings which are not alone sufficient to justify the addition, the income so assessed is not tenable in the eyes of law. Therefore there cannot be any reason for disbelieving the genuineness of the sales of the appellant merely for the reasons that the same is of abnormal amount and not commensurate with the past trends more so when the same is duly supported with sale bills and the appellant was having the sufficient stock for that much of sales.

7.5. An amount of Rs.34,74,000/- was added by the AO as income of the appellant by applying the provisions of section 69A of the Act while the provisions of section 69A as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in Profit & Loss Account, therefore there is no occasion to again consider the same as income of the appellant by applying the provisions of section 69A of the Act. The Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC) held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The appellant has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

7.6. The Hon'ble ITAT Visakhapatnam in the case of Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam v. M/s Hirapanna Jewellers held that: -

*The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of Rs. 1000 and Rs. 500 notes on 8-11-2016. As cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again.*

*This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House [2010 (4) TMI 1070 Delhi High Court] and Vishal Exports Overseas Ltd. [2012 (7) TMI 1110 (Ahmedabad High Court)]*

*The case of CIT v. Kailash Jewellery House ITA No. 613/2010 was decided by the Hon'ble Delhi High Court on 09-4-2010 wherein it was held that "In the facts of above case, cash of Rs. 24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not established with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs. 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department".*

*The case of CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 was decided by the Hon'ble Gujarat High Court on 3-7-2012 wherein it was held that "In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs. 70 lacs included in turn-over which was more than 500 crores. The assessee had claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income. The Assessing Officer could only reject claim u/s 80HHC of the Act".*

*7.7. It has also been held by Courts that contraventions of notification issued by RBI would not attract provisions of section 68. The judgments of the courts are squarely applicable in the present case of the assessee.*

*In Sri Bhageeratha Pattina Sahakara Sangha Niyamitha Vs ITO, Hon'ble ITAT Bangalore has held that contraventions of notification issued by RBI would not attract provisions of section 68. It held-*

*"15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable*

*to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec. 68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec. 68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec. 68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance."*

*In Prathamika Krushi Pattina Sahakari Sangha Vs ITO, the Hon'ble ITAT Bangalore has also held -*

*"6. In the instant case, there is no dispute with regard to the fact that sources for making deposit of Rs.36.36 lakhs by the assessee into itsn bank Prathamika Krushi Pattina Sahakari Sangha account are the money collected from its members. The AO is also not doubting that all the SBNs have been collected by the assessee from its members. Accordingly, following the above said decision, I hold that the addition made u/s 68 of the Act is not justified. The Ld A.R also submitted that the SBNs have been collected by the assessee prior to the appointed date of 31.12.2016, i.e., only from 31.12.2016, the assessee is precluded from accepting SBNs from its members. In this view of the matter, the reasoning relating to contravention of rules of RBI also fails.*

*7. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned disallowance."*

*7.8. In view of the facts of the case, it is evident that the appellant has duly substantiated its claim from the documentary evidences and also with the facts which the AO has not taken on record. AO has accepted the fact that the appellant is into business and thereby proceeded to calculate cash deposits in SBNs. The amount of cash sales is being reflected in his trading and profit and loss account. Therefore, I find that the AO was not justified in making an addition of Rs.34,74,000/-*

*under section 69A of the Act and consequently the aforesaid addition is directed to be deleted.*

#### *7.9. Findings on Ground of appeal*

*Ground of appeal 5 is directed against the action of AO in estimating net profit at the rate of 10 percent of total turnover. The assessee in his written submission stated that sales ledger was uploaded and AO has considered correct and accepted the total sales as declared by the appellant during the assessment proceedings. It submitted that it has uploaded written submissions along with the required details, books of accounts, documents, bills, etc. twice on online portal and e mailed to the email ID of the AO. It further contended that cash book and ledger were also produced manually. However, as seen in the preceding para the AO has rejected the books of account under section 145(3) considering that no books of account and bills or vouchers were furnished and proceeded to estimate net profit at 10% of total turnover.*

*7.10. I have considered the submissions of the assessee carefully and examined the details submitted. I am of the view that the AO has not carefully considered the submission of the assessee and failed to check the online portal for submission. Further, the estimation of net profit at 10% of turnover is also without any basis. The AO has not made any comparison or bring on record data for comparison of net profit rate shown by entities/persons in the same line of business. In view of the above, the estimation of net profit at 10% is held to be unsustainable and without any logical base and liable to be deleted.*

*7.11. Further, I am of the view that the AO has not elaborated deeper into the issue and make an effort to analyse the information viz a viz the nature of business of the assessee. He has also rejected the books of account u/s 145(3) without determining the following that the rate of Gross Profit declared by the assessee is low as compared to other assessee's in the same line of business or with reference to assessee's margins in earlier years.*

*7.12. Furthermore, non-maintenance of stock register on day to day basis by itself cannot lead to inference that it is not possible to deduce the true income of the assessee from the accounts maintained by assessee, nor can the accounts be said to be defective or incomplete for this reason alone. If the assessee is dealing in such items where maintenance of stock register is not possible i.e. keeping in mind the quantity, size, varieties, processes involved in production etc it can't be treated as defect for application of section 145(3) of the Act.*

#### *8. Decision*

*8.1. In view of discussion in para 7.2 to para 7.8, the addition of Rs. 34,74,000/- under section 69A has been held unjustified and thus not sustainable. Accordingly, the addition is deleted. Grounds of appeal 1 to 4 are hereby allowed.*

*8.2. In view of discussion in para 7.9 to para 7.12, rejection of books of account and estimation of net profit at 10% of turnover have been held to be void of any logic and thus it is hereby held not sustainable. Accordingly, the addition of Rs. 1,66,12,849 is deleted. Ground of appeal 5 is hereby allowed.”*

This is what leaves the Revenue aggrieved who has filed the instant appeal before the tribunal.

5. We have given our thoughtful consideration to the Revenue's grounds raised in the instant appeal as well as the assessee's vehement contentions supporting the CIT(A)'s action deleting both these additions. Learned senior departmental representative strongly argues in support of the Revenue's pleadings that the CIT(A) has admitted the assessee's additional evidence(s) in violation of Rule 46A of the Income Tax Rules, 1962. Learned counsel on the other hand has denied any such additional evidence filed at the assessee's behest before the CIT(A). It is at this stage that our attention is sought to be invited to the assessment findings on the ground that no such evidence had been discussed therein by the Assessing Officer. The assessee's case on the other hand takes us to the page 12 onwards in the CIT(A)'s order tabulating

the Assessing Officer's various show-cause notices which stood duly replied along with all the ledgers of purchases and expenditures, balance-sheet etc. And also that the learned Assessing Officer had initiated section 272A(1)(d) penalty against the assessee alleging non-cooperation which stood dropped in his order dated 12<sup>th</sup> March, 2022. We safely in this backdrop conclude that the assessee never filed any additional evidence in the lower appellate proceedings which could be held to have violated Rule 46A of the Income Tax Rules as projected in the Revenue's arguments.

6. Next come the twin issues of the assessee's cash deposits and estimation of its profits made by the Assessing Officer and deleted in the lower appellate proceedings. It has already come on record in the CIT(A)'s lower appellate discussion that the assessee is engaged in the liquor business, who had duly complied with all the statutory requirements being a licence holder with the state government. And also that the Assessing Officer had not alleged any specific default in its books of account under section 145(3) before rejecting the same and arriving NP @ 10% (supra). We accordingly are of the considered view that the Revenue's instant

twin substantive grounds seeking to revive the impugned as many additions herein do not deserve to be accepted. We thus see no reason to interfere with the learned CIT(A)'s detailed findings reversing the Assessing Officer's action on both these issues. Rejected accordingly.

No other ground or argument has been pressed before us.

7. This Revenue's appeal is dismissed.

***Order pronounced in the open court on 23<sup>rd</sup> May, 2025***

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 23<sup>rd</sup> May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi